IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1106 OF 2005

Shri Baban Kisan Deshmukh ... Appellant

V/s

Shri Sopan Babu Kotwal ... Respondent

Mr. U.B. Nighot for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 3RD OCT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pune, dated 21.2.2005 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Khed, dated 13.11.2003 dismissing the suit.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for declaration and possession of the suit property alleging that the suit property belongs to him and he was dispossessed by the

defendant about 15 days prior to the filing of the suit. The plaintiff came with the case that the suit property was purchased by his grandfather in the year 1947 and since then they were in possession of the said suit property and have ownership. But the respondent on the basis of fraudulent transaction of the year 1950 had dispossessed them about 15 days prior to the suit and hence the suit came to be filed for declaration and possession of the suit property.

The defendant contested the suit inter-alia denying all the allegations and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to his title over the suit property and that the suit transaction of the year 1950 was illegal and, as such, it was not established that he was dispossessed from the suit property and hence dismissed the suit.

The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both sides, dismissed the appeal. Hence the present appeal.

5. Initially, it must be noted that there is no

substantial question of law involved in the present appeal and both the Courts below have properly appreciated the evidence on record which is on factual issues and it is seen that they have come to the concurrent findings that the plaintiff has failed to establish his title to the suit property and, therefore, he is not entitled to the declaration and possession thereof.

Perusal of the judgment of the lower appellate Court shows that appellant-plaintiff came with the case that he was owner of the suit property on the basis of sale deed dated 17.4.1947 which was executed between their ancestrals and was in possession since then till he was dispossessed by the respondent-defendant 15 days' prior to the suit. The sale deed dated 1.6.1950 has also come on record whereby defendants are seen to be owners and in possession of the suit property. It is the case of the appellant that the so called sale deed of 1.6.1950 was fraudulent document as it is seen from the record that the said sale deed was executed by appellant's grandfather Yashwantrao. However, it is the case of the appellant that, his grandfather died on 14.5.1950 and, therefore, he cannot have executed the sale deed dated 1.6.1950. In order to prove the fraudulent aspect of

the subsequent transaction, it was necessary for the appellant to prove by cogent evidence the date of death of his grandfather to show that the document of sale deed executed in 1950 was fraudulent document. However, his evidence was not sufficient to show that the subsequent transaction was a fraudulent transaction and, as such, both the Courts below have come to the conclusion that the plaintiff has failed to establish his title to the suit property.

6. I do not find any merits in the appeal for want of substantial question of law and no interference is required in the concurrent findings recorded by both the Courts below and hence the appeal deserves to be dismissed and stands dismissed with no order as to costs.

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